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FILED IN THE
 U.S. DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON

JUL 05 2006

JAMES R. LARSEN, CLERK
 DEPUTY
 RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON
 AT SPOKANE

10 PIPER JAFFRAY & CO., a Delaware
 11 corporation, and UBS FINANCIAL
 SERVICES INC., a Delaware corporation,

12 Plaintiffs,

13 v.

14 WILLIAM P. FLEENOR and
 15 D.A. DAVIDSON & CO., a Montana
 16 corporation,

17 Defendants.

The Honorable *Edward J. Shea*
~~Larry R. Suko~~

NO. CV-06-5054 ~~ERS~~ EFS

TEMPORARY
 RESTRAINING ORDER

~~[PROPOSED]~~

19 This matter came before the Court on Plaintiffs' Motion for Temporary
 20 Restraining Order and Expedited Discovery. The Court having considered the
 21 records and files of this proceeding, including the following materials
 22 submitted by Piper Jaffray & Co., Inc. ("Piper Jaffray") and UBS Financial
 23 Services Inc. ("UBS") (collectively "Plaintiffs"):

- 24 (a) Complaint for Immediate Injunctive Relief;
 25 (b) Plaintiffs' Motion for Temporary Restraining Order and Expedited
 26 Discovery and Memorandum in Support Thereof;

TEMPORARY RESTRAINING ORDER
~~[PROPOSED]~~ - 1

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1 (c) Declaration of Steven M. Phillips in Support of Plaintiffs' Motion for
2 Temporary Restraining Order and Expedited Discovery, and subjoined
3 attachments;

4 (d) Declaration of Robert S. Hanson in Support of Plaintiffs' Motion for
5 Temporary Restraining Order and Expedited Discovery;

6 (e) Declaration of Michael Maehl in Support of Plaintiffs' Motion for
7 Temporary Restraining Order and Expedited Discovery;

8 (f) Declaration of Roger D. Mellem in Support of Plaintiffs' Motion for
9 Temporary Restraining Order and Expedited Discovery, and subjoined
10 attachments; and

11 (g) Second Declaration of Roger D. Mellem, Regarding Notice to
12 Defendants, and subjoined attachments.

13 (h) *Materials submitted in opposition to Plaintiffs' request for TRO/PI*
14 *JEF*

15 After considering the above materials and any written opposition from
16 the Defendants, and hearing oral argument of counsel, this Court has
17 determined that:

18 FINDINGS OF FACT

19 1. Plaintiff Piper Jaffray is a broker-dealer of securities with its principal
20 place of business in Minneapolis, Minnesota, and a member firm of the
21 National Association of Securities Dealers, Inc. ("NASD"). Piper Jaffray
22 is a Delaware corporation and maintains an office in Walla Walla,
23 Washington.

24 2. Plaintiff UBS is a broker-dealer of securities with its principal place of
25 business in New York, New York, and a member firm of the NASD.
26 UBS is a Delaware corporation and does business in the state of
Washington.

3. Defendant Fleenor is a former registered representative and employee of
Piper Jaffray who operated out of Piper Jaffray's office in Walla Walla,
Washington.

1 4. Defendant D.A. Davidson & Co. ("D.A. Davidson") is a Montana
2 corporation transacting business in Washington State.

3 5. On June 23, 2006, Defendant Fleenor voluntarily resigned his
4 employment with Piper Jaffray and became employed as a registered
5 representative with D.A. Davidson.

6 6. Defendant Fleenor entered into a Training Agreement with Piper
7 Jaffray's predecessor, Piper Jaffray & Hopwood ("PJH"), on or about
8 July 19, 1989 ("Training Agreement").

9 7. The Training Agreement provides in relevant part at Paragraph E:

10 2. For ninety (90) days from the end of your
11 employment, you will not directly or indirectly solicit, or
12 assist in the solicitation of any customers of PJH to purchase
13 or sell securities, commodities or deferred annuities; and

14 3. For ninety (90) days from the end of your
15 employment, you will not directly or indirectly use for your
16 benefit or any other employer any of the customer or
17 business information obtained by you from PJH during the
18 course of employment by PJH.

19 8. The Employment Agreement also states: "If your employment with
20 PJH ends, either through termination by PJH or through resignation by you,
21 you will surrender all training materials, account records, customer statements
22 and customer files and other documents pertaining to PJH's customers,
23 business methods and procedures, as well as all copies thereof."

24 CONCLUSIONS OF LAW

25 1. There is complete diversity of citizenship between the Plaintiffs and the
26 Defendants, and the Court has jurisdiction of this dispute.

1 2. The Court has considered the factors specified in *E. & J. Gallo Winery v.*
2 *Andino Licores S.A.*, 446 F. 3d 984 (9th Cir. 2006), as well as the
3 Washington, Minnesota, and other law cited in Plaintiffs' Motion.
4 "A preliminary injunction is appropriate 'where plaintiffs demonstrate
5 either: (1) a likelihood of success on the merits and the possibility of
6 irreparable injury; or (2) that serious questions going to the merits were
7 raised and the balance of hardships tips sharply in their favor.'" *Id.* at
8 990 (citations omitted).

9 3. The Court specifically finds:

10 A. Plaintiffs have demonstrated that they are likely to succeed
11 on the merits and face the possibility of irreparable injury.

12 B. Plaintiffs have also raised serious questions and the balance
13 of hardships tips sharply in their favor.

14 C. Plaintiffs will suffer irreparable harm if Defendant Fleenor or
15 his agents are permitted to (i) solicit business from Piper Jaffray customers and
16 accounts and/or (ii) use or disclose for his own benefit or for the benefit of his
17 new employer, D.A. Davidson, the records of Piper Jaffray or information
18 taken from Piper Jaffray;

19 D. Plaintiffs will suffer irreparable harm if Defendant
20 D.A. Davidson or its agents are permitted to (i) solicit business from Piper
21 Jaffray customers and accounts using information provided by Defendant
22 Fleenor or any of his agents (ii) use or disclose for its benefit the records of
23 Piper Jaffray or information taken from Piper Jaffray by Defendant Fleenor or
24 any of his agents.

25 E. Plaintiffs do not have an adequate remedy at law; and
26

based on the pleadings filed to date.
JES

TEMPORARY RESTRAINING ORDER

~~PROPOSED~~ - 4

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1 F. In view of the considerations described above, the balance of
2 equities in this matter favors Plaintiffs.

3 2. The dispute represented in the above-entitled action should proceed
4 in arbitration in accordance with the rules of NASD Dispute Resolution, Inc.
5 ("NASD-DR").
6

7 **ORDER**

8 1. A Temporary Restraining Order shall issue immediately pursuant to
9 Fed. R. Civ. P. 65(c), with security in the amount of \$ 10,000 ^{which has been} posted by JSD
10 Plaintiffs, ~~no later than 4:30 p.m. on July __, 2006;~~

11 2. The show cause hearing on the preliminary injunction is set for
12 July 21, 2006 at 10:00 o'clock a.m./p.m. in Room ____ of the courthouse
13 of the Eastern District of Washington at Richland, located at
14 U.S. Courthouse, Courtroom of Judge Shain Richland, Washington.

15 3. The Defendants are ordered to appear and show cause why a
16 preliminary injunction should not be issued.

17 4. The parties are hereby directed to use reasonable efforts to proceed
18 with, and cooperate regarding, arbitration of this matter before NASD-DR.

19 ~~Any party may apply to this Court for relief in the event that conduct by~~
20 ~~another party results in any unwarranted delay of such arbitration proceedings.~~ JSD

21 5. Subject to the terms, conditions and exceptions of this Order,
22 Defendants, whether alone or in concert with or through others, including but
23 not limited to, any officer, agent, representative, and/or employee of
24 D.A. Davidson, shall be and hereby are enjoined from soliciting or initiating
25 contact with, directly or indirectly, any customer whom Defendant Fleenor
26

1 served and/or first became aware of while employed at Piper Jaffray, and from
2 soliciting, directly or indirectly, the securities business of any such customer
3 (other than his immediate family members).

4 6. Defendants shall not utilize, directly or indirectly, any information
5 or documents of Piper Jaffray which Defendant Fleenor obtained while he was
6 employed with Piper Jaffray.

7 7. The following exceptions shall apply to paragraphs 5, 6 and 7
8 herein: Defendants may provide advice to, and effect transactions for (a) any
9 Piper Jaffray customer who initiates contact with Defendants for the purpose of
10 transferring their Piper Jaffray account to D.A. Davidson and (b) any Piper
11 Jaffray customers who transferred their account(s) to D.A. Davidson in
12 response to any mailing or solicitation made by Defendants before this Order
13 was issued, whether the transfer was made before or after the Order was issued,
14 provided that as to any such customers who have not yet signed account
15 transfer paperwork, the Defendants and anyone acting in concert or
16 participation with them may not communicate, directly or indirectly, to such
17 customers anything to the effect that Defendants would be free to talk to the
18 customers if the customers sign account transfer forms. Collectively, the
19 customers in subparagraphs (a) and (b) are referred to as "Transferred
20 Customers."

21 8. Defendant Fleenor is hereby ordered to keep a log of all
22 communications, contacts and transactions he has with all persons who were
23 customers of Piper Jaffray as of June 23, 2006. The log shall identify the
24 person who initiated the contact, the names of the recipient of the contact, the
25 date and time of the contact, and the subject matter of the communication.
26

1 Should Defendants desire to confirm whether a person or entity is covered by
2 this paragraph, Defendants' counsel shall contact Plaintiffs' counsel to seek
3 confirmation as to whether the person or entity was a customer of Piper Jaffray
4 as of June 23, 2006.

5 9. Defendants are ordered to return to counsel for Defendants by ^{12th} ~~July 7~~ 5:30 p.m. on July 7, 2006 all original records, copies, computerized information ^{JES}
6 and/or other reproductions thereof, in whatever form, pertaining in any way to
7 Piper Jaffray's customers (including, without limiting the generality of the
8 foregoing, any compilations containing names, addresses, telephone numbers,
9 e-mail addresses and/or account numbers of Piper Jaffray customers).
10 Defendants' counsel shall be entitled to copy such records, but shall not share
11 the documents or their contents with Defendants, who then shall return the
12 originals to counsel for Piper Jaffray no later than ^{14th} ~~July 8~~ 5:30 p.m. on July 8, 2006. ^{JES}
13 ~~Moreover, by 5:30 p.m. on July 6, 2006 all information contained in or derived~~
14 ~~from such records shall be purged from the possession, custody, and control of~~
15 ~~Defendants. Notwithstanding the foregoing,~~ Defendants may retain copies of
16 documents relating to Transferred Customers.

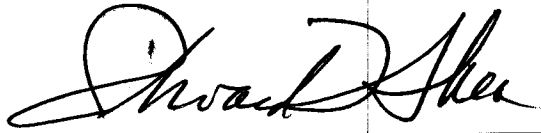
17 10. Specifically, Defendants are ordered to return all of the following
18 documents, whether in written or electronic format: (a) all records or other
19 documents taken from Piper Jaffray or any of its affiliates (including without
20 limitation records created by Fleenor or his agents in connection with his
21 employment by Piper Jaffray); (b) all copies or other reproductions of any of
22 the foregoing records or other documents; (c) all notes or other documents
23 reflecting information taken from Piper Jaffray and any of its affiliates; and
24 (d) without limiting the generality of the foregoing, any and all other
25
26

documents reflecting, memorializing, recording or incorporating information relating to Piper Jaffray customers and/or to their Piper Jaffray accounts (including, without limiting the generality of the foregoing, any compilations containing names, addresses, telephone numbers, e-mail addresses and/or account numbers of Piper Jaffray customers). Defendants shall deliver all of said materials to legal counsel for Plaintiffs: Roger D. Mellem, Ryan Swanson and Cleveland, PLLC, 1201 Third Avenue, Suite 3400, Seattle, Washington 98101.

11. In aid of the preliminary injunction hearing, the time for discovery *will be* ~~is shortened to seven (7) calendar days after service~~ *shortened to 10 calendar days to begin Friday, July 7th & end Wednesday July 12th.*

12. This Order shall remain in full force and effect pursuant to Fed. R. Civ. P. 65(b) ~~for ten days from the date of its entry or until or unless the NASD-DR arbitration panel that will hear this dispute on its merits elects to modify this Order.~~ *until the conclusion of the PI hearing on July 12th.* JRS

SO ORDERED this 5 ^{TN} day of July, 2006.


UNITED STATES DISTRICT JUDGE

1
2 Presented by:

3 RYAN, SWANSON & CLEVELAND, PLLC
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5
6 By:

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19 Of Counsel:

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25 Attorneys for Plaintiff UBS Financial
26 Services Inc.

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2 [pro hac vice application to be filed]
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